



Legal Update

Commonwealth v. DeJesus

March 1, 2021

Automatic standing applies when defendant charged with possessing item at time of search

Commonwealth v. DeJesus

Appeals Court 19-P-1431 March 1, 2021

Relevant facts: On July 26, 2018, a detective was monitoring the Snapchat account of a known gang member. The detective observed numerous videos which he identified as being taken within the past 24 hours. In several videos the detective saw the defendant holding a “black semi-automatic pistol with an extended magazine and a distinct tan/cream colored grip.” The videos also showed a basement area and the outside of a 3-family house on Downing Street. The defendant did not live in that house.

Officers went to the home and saw several people, including the defendant and the known gang member, standing out front. When police approached, the group dispersed. The defendant walked away down the street. The detective chased the known gang member around the back of the building. The back yard was empty, but the detective saw a door to the basement was ajar and could hear people running in the basement. Officers followed the footsteps by entering the basement through the open door. Officers saw a gun in plain sight in an open bag placed on a table. The gun appeared to be the same one the defendant had in the videos. Police seized the scene and applied for a search warrant.

Issue: Does the defendant have automatic standing to contest the search?

Short answer: No because the defendant was not charged with possessing the firearm at the time it was found.

For specific guidance on the application of these cases or any law, please consult your supervisor or your department’s legal advisor or prosecutor.

Discussion: A defendant has automatic standing to contest a search in cases where possession of an item at the time of the search is an essential element of guilt. In Massachusetts, the question of standing is separate from the question of whether there was a reasonable expectation of privacy. If automatic standing applies, the defendant does not need to demonstrate his/her own personal privacy interest. A defendant with automatic standing need only show that someone had a reasonable expectation of privacy in the place searched.

Standing: “It is undisputed that the defendant was not in possession - actual or constructive - of the firearm at the time of search.” The defendant was charged with possessing the gun at the time the videos were made. For this reason, automatic standing does not apply.

Expectation of privacy: Even if the defendant had automatic standing, he cannot demonstrate a search in the constitutional sense took place. A search in the constitutional sense occurs only if someone has a reasonable expectation of privacy in the area that is being searched. If there is no reasonable expectation of privacy, there is no search.

In this case, the defendant himself had no reasonable expectation of privacy in the basement because he did not live there, he was not an overnight guest, and he did not own the building.

In addition, there was no objective expectation of privacy in the basement. To determine whether anyone has a reasonable expectation of privacy in the items and area searched, the court considers two (2) factors: 1. whether anyone has a subjective expectation of privacy in the object of the search; and 2. whether society would recognize that expectation as reasonable. Neither factor is present here. The basement searched was readily available to use by all tenants, their invitees, and the landlord and none of those parties exerted exclusive control over the area. In addition, none of the doors to the basement had locks.

The motion to suppress was properly denied.

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